

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

|                           |   |                    |
|---------------------------|---|--------------------|
| MICHAEL GRADY,            | ) |                    |
|                           | ) |                    |
| Petitioner,               | ) |                    |
|                           | ) |                    |
| v.                        | ) | No. 4:08CV1243 RWS |
|                           | ) |                    |
| UNITED STATES OF AMERICA, | ) |                    |
|                           | ) |                    |
| Respondent.               | ) |                    |

**MEMORANDUM AND ORDER**

This matter is before the Court on petitioner's petition for writ of coram nobis. The petition will be denied.

Petitioner was charged in a one-count indictment with conspiracy to possess with intent to distribute heroin, in violation of 21 U.S.C. §§ 841, 846. United States v. Bailey, 4:99CR290 SNL (E.D. Mo.). Petitioner pled guilty to the charge and stipulated to being accountable for between three and ten kilograms of heroin. Id. Petitioner was sentenced to a 112-month term of imprisonment. Id.

Petitioner appealed the judgment on the basis that the indictment was insufficient under Apprendi v. New Jersey, 530 U.S. 466 (2000). The United States Court of Appeals for the Eighth Circuit denied the appeal because the sentence did not exceed the maximum term for a non-quantity based drug offense. United States v. Grady, 242 F.3d 377 (8th Cir. 2000) (unpublished per curiam).

Petitioner did not file a timely motion to vacate pursuant to 28 U.S.C. § 2255. Petitioner filed his first petition for writ of coram nobis on January 24, 2001, in which he again challenged the sufficiency of the indictment under Apprendi. Grady v. United States, 4:01CV130 SNL (E.D. Mo.). The Court denied the petition, and the United States Court of Appeals for the Eighth Circuit dismissed petitioner's appeal.

Petitioner now seeks a petition for writ of coram nobis on the basis that the indictment was not sufficient and that there was insufficient evidence of a conspiracy.

Coram nobis is an "extraordinary remedy" and is not intended to be a substitute for § 2255 proceedings. See United States v. Morgan, 346 U.S. 502, 511 (1954). In coram nobis proceedings, "[i]t is presumed the [underlying] proceedings were correct and the burden rests on the accused to show otherwise." Id. at 512.

The claims in the instant petition were either previously raised or could have been raised on direct appeal or in a proper § 2255 motion. Coram nobis is not, therefore, available to provide petitioner's requested relief. As a result, the petition will be denied.

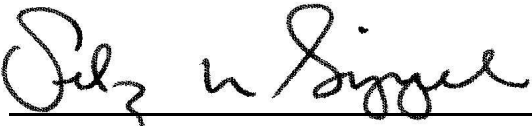
Accordingly,

**IT IS HEREBY ORDERED** that petitioner's motion to proceed in forma pauperis is **GRANTED**.

**IT IS FURTHER ORDERED** that petitioner's petition for writ of coram nobis is **DENIED**.

An Order of Dismissal shall accompany this Memorandum and Order.

Dated this 3rd day of September, 2008.

  
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RODNEY W. SIPPEL  
UNITED STATES DISTRICT JUDGE